

DOCKET NUMBER
PROPOSED RULE RM 50-5 et al



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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MIXED OXIDE FUEL: INTERNATIONAL : Docket Nos. RM 50-5,
: 50-201, 50-332, 50-564,
NUCLEAR FUEL CYCLE EVALUATION : 50-1327, 50-1432, 50-1821
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VIEWS OF WESTINGHOUSE ELECTRIC CORPORATION ON
NUCLEAR REGULATORY COMMISSION ORDER OF AUGUST 7, 1980
CONCERNING RESUMPTION OF GESMO AND OTHER
RECYCLE-RELATED LICENSING PROCEEDINGS

Westinghouse Electric Corporation ("Westinghouse") hereby submits its views in response to the August 7, 1980 Order of the Nuclear Regulatory Commission ("Commission") inviting parties to the GESMO proceeding and recycle-related licensing proceedings to provide comments on certain matters relating to the reopening of such proceedings. In particular, the Commission Order invited comments on three questions. The questions and Westinghouse's responses are as follows:

1. Question: Whether the Commission should reopen GESMO and other recycle-related licensing proceedings?

Westinghouse Position: Westinghouse submits that the Commission should and must reopen such proceedings for both policy and legal reasons.

Acknowledged by card: _____

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2. Question: What action, if any, the Commission should take regarding the license applications . . . which relate to the commercial reprocessing of nuclear material?

Westinghouse Position: Westinghouse submits that the Commission must proceed to consider those applications and to afford an opportunity for the applicants to demonstrate compliance with pertinent regulations.

3. Question: Whether the Commission should consider any other actions relating to this subject?

Westinghouse Position: Westinghouse believes the Commission should urge the President to adopt the two recommendations contained in the letter to the President from Scientists and Engineers for Secure Energy, Inc., dated April 11, 1980, to-wit, urge the President to issue a declaration reaffirming the prior commitment of the United States to active participation in the development and implementation of international programs allowing all nations access to adequate fuel supplies and necessary technologies for commercial production of nuclear power under strict and comprehensive safeguards; and, urge the President to establish a domestic Presidential commission of experts to prepare, in light of INFCE, detailed recommendations concerning the scope and intensity of United States participation in the production and international management of fuels and the supervision of their commercial utilization.

POLICY ASPECTS

On May 2, 1980, the Commission requested the views of the President on whether the results of INFCE or events since October 1977 had changed the administration's non-proliferation policies and whether the President's prior position not to proceed with the GESMO proceeding continue to be the views of the administration. By letter dated July 14, 1980, Mr. Stuart E. Eizenstat, Assistant to the President for Domestic Affairs and Policy, replied to the Commission inquiry. Although the Eizenstat letter stated the view that the GESMO proceedings should remain terminated, the conclusory nature of the letter makes it difficult to understand the basis on which the administration has determined that the results of INFCE do not affect the President's decision in April 1977 to defer commercial reprocessing and recycle. Westinghouse submits that the results of INFCE provide additional support for the view that commercial reprocessing should be examined in a reopened GESMO proceeding.

INFCE, which was organized at the behest of the United States, conducted a thorough analysis of alternative fuel cycles. Its conclusions support reprocessing and recycle. As evidenced by INFCE, current international plans and policies pertaining to reprocessing vary greatly. Certain countries have reprocessing facilities and offer

reprocessing services to other nations on a commercial basis. Other countries have no plans to construct reprocessing facilities. Some supplier nations retain a veto over reprocessing of fuel originally provided. These disparities in policy and practices complicate nuclear trade and operations and do not mitigate proliferation concerns, since supplier-imposed conditions and constraints are usually viewed as arbitrary actions. A system of offering mutually agreed upon reprocessing and fast breeder reactor fuel cycle services under effective proliferation control would be more efficient and preferable to attain the goals of non-proliferation, to insure continuation and expansion of the nuclear option and to provide a reliable energy source. In order for the United States to participate in such systems, it is necessary to complete the GESMO proceeding to provide a sound basis for our policy on reprocessing.

The INFCE studies have created a forum for international nuclear discussion, and Westinghouse submits that the momentum of INFCE should be continued. Westinghouse would like to see the United States take the initiative in establishing international institutional fuel cycle activities, including acceptance of appropriate safeguards. Again, to accomplish this objective, it is necessary to proceed with the generic environmental review of the impacts of mixed oxide

fuel and reprocessing. For this country to have a viable position in the worldwide consideration of fuel cycle activities, we must demonstrate that we are willing to respect the conclusions of international studies and are prepared to go forward to consideration of recycle.

The Commission may be told by those who oppose reopening of the GESMO proceeding that resumption is not necessary because use of plutonium in light water reactors either will be uneconomical or marginal for many years. The Commission also may be told that recent trends with regard to cost and availability of uranium resources, demand for nuclear power, cost of reprocessing, threat of nuclear proliferation and waste management are such that reopening of GESMO is not needed or appropriate. Such arguments against reopening GESMO beg the question. The very purpose of the GESMO proceeding is to obtain a factual basis on which determination of the above matters can be made. Westinghouse believes that the results of the GESMO proceeding will be favorable to recycle on an overall cost-benefit basis. This conclusion was reached by the Commission Staff prior to termination of the GESMO proceeding, and nothing which has occurred since preparation of the Staff position significantly alters this conclusion. The only way for the Commission now to determine whether recycle should be permitted is to reopen the GESMO proceeding.

In addition to the above reasons, Westinghouse believes that consideration and conclusion of the GESMO proceeding and the recycle-related license application will be important from the standpoint of resolving the waste management question. Unless and until it is determined whether recycle will be allowed in the United States, options for nuclear waste management, including those which involve recycle, must be kept open. Resolution of reprocessing will narrow waste management considerations and assure the best use of this nation's resources. Reopening the GESMO proceeding also will contribute to the breeder reactor program whether or not GESMO itself relates only to recycle in light water reactors. Information obtained and developed during the GESMO proceeding on such matters as safeguards will form a factual basis for consideration of similar issues which must be addressed in connection with the breeder program.

For all of the above reasons, Westinghouse submits that the Commission, despite the views expressed in the Eizenstat letter, must resume the GESMO proceeding and recycle-related licensing actions.

LEGAL ASPECTS

In the views of Westinghouse Electric Corporation submitted in response to the October 28, 1977 Order of the

Commission inviting GESMO participants to submit views on the then-pending question of termination of GESMO, Westinghouse discussed the various reasons why, under the law, Westinghouse believed continuation of the GESMO proceeding was mandated. Those reasons are equally applicable to consideration of whether GESMO and the recycle-related licensing proceedings should be reopened. In addition, it now is necessary for the Commission to take into account the opinion of the United States Court of Appeals for the Third Circuit in Westinghouse Electric Corporation v. United States Nuclear Regulatory Commission, 598 F.2d 759 (1979), and the representations made to the Court by the Commission in connection with that case.

When the Commission on December 23, 1977 decided to place a moratorium on the GESMO rulemaking and recycle-related licensing proceedings, the Commission described its actions as a licensing pause for the purpose of generating on a multinational basis an evaluation of alternative fuel cycles that might pose a lesser risk of international proliferation of nuclear weapons. The moratorium decision was challenged in the suit before the Third Circuit. In its pleadings to the Court, the Commission described its action as a two- or three-year pause to enable the INFCE studies to be undertaken and completed. Based in large part on these and similar representations, the Court of Appeals

found that the Commission had not abused its discretion in imposing the moratorium and that the then expected two-year duration of the moratorium was not unreasonable.

The Commission, in imposing the moratorium, committed itself to re-examine its decision in light of future developments and to determine what course of action should be taken on both the license applications and the overall question of widespread plutonium recycle. Although the Commission's brief to the Court indicated that the Commission's decision involved no commitment on whether or not GESMO and the review of the related applications would ultimately go forward, it is clear from the Opinion of the Court that the Commission left a presumption that whatever course it adopted in the future "will lead to a final determination whether or not to issue the requested licenses."

Now that the INFCE study has been completed, we submit that the Commission is obligated under the law to go forward and pass on the merits of the applications. As stated by the Court of Appeals:

". . . the NRC may not completely terminate license application proceedings without passing on the merits of the applications, simply by declaring an open-ended moratorium. It is required by statute to fix the conditions and regulations pursuant to which licenses will be granted, and to award such licenses if the prerequisites are met, unless it makes a finding of inimicality to the common defense and security or to the public health and safety." 598 F.2d at 774.

In order to fix the conditions referred to by the Court under which licenses will be granted, Westinghouse submits that it is necessary for the Commission at this time to go forward with the GESMO proceeding. Further, in order to determine whether the prerequisites for license are met and hence whether any specific license should be granted or whether such a grant would be inimical to the common defense and security or the public health and safety, Westinghouse submits that the Commission must go forward with its consideration of the recycle-related applications. Any other action by the Commission in this regard, including the continuation of the moratorium on the GESMO proceeding, would constitute a moratorium of unreasonable duration and a de facto denial of the license applications. It is clear from the Court of Appeals decision that such an extension of the moratorium to an unreasonable duration or such a de facto denial of the license application is not lawfully permissible.

For all of the above reasons, Westinghouse submits that the GESMO proceeding should be resumed and should be moved to a prompt conclusion. Westinghouse also submits that the Commission should resume the licensing actions with respect to the recycle-related license applications. In order for the United States to actively participate in international activities regarding fuel cycle management, and in

order for the United States to have a rational domestic fuel cycle decision, and in order to comply with the law, Westinghouse submits that the Commission has no alternative but to go forward at this time with these proceedings.

Respectfully submitted,

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Dated: September 29, 1980

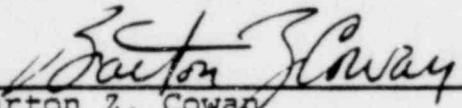
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Views of Westinghouse Electric Corporation on Nuclear Regulatory Commission Order of August 7, 1980 Concerning Resumption of GESMO and Other Recycle-Related Licensing Proceedings" were served upon the persons listed on Attachment 1 to this Certificate of Service by deposit in the United States Mail (First Class), postage prepaid, this 29th day of September, 1980.



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ATTACHMENT 1

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